

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMIL SHTEIWI.,	:	Case No. 3:19-cv-190
	:	
Plaintiff,	:	
	:	
vs.	:	Magistrate Judge Peter B. Silvain, Jr.
	:	(by full consent of the parties)
	:	
COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION,	:	
	:	
Defendant.	:	

DECISION AND ENTRY

This case is before the Court upon Plaintiff's Motion for Allowance of Attorney Fees. (Doc. #18). The Commissioner has neither responded to nor opposed this Motion.

The Motion seeks an award of attorney fees under 42 U.S.C. § 406(b)(1) in the total amount of \$19,899.38. *Id.* Plaintiff's counsel indicates that they were advised by the Commissioner that, although he cannot consent to a fee under 42 U.S.C. § 406(b)(1), he does not object to the reasonableness of the fee requested by Plaintiff. *Id.* at 1336. In the absence of opposition by the Commissioner, the Motion and supporting Exhibits establish that an award of attorney fees is reasonable and warranted under 42 U.S.C. § 406(b)(1) in the amount Plaintiff's counsel seeks.

In addition, the Court previously accepted the parties' stipulation to an award of \$4,200.00 in attorney fees to Plaintiff's counsel under the Equal Access to Justice Act (EAJA). (Doc. #17). In Plaintiff's previous case, the Court likewise accepted the parties' stipulation to an EAJA award of \$4,920.00 in attorney fees to Plaintiff's counsel under the EAJA. *See Shteivi v. Comm'r of Soc. Sec.*, case no. 3:16-cv-105, Doc. #17 (S.D. Ohio Oct. 25, 2017). Both EAJA awards, however, were subject to offset in the amount of any debt Plaintiff owed the Government. *See id.*; Doc. #17.

The current record indicates that Plaintiff's attorney received EAJA fees in the total amount of \$9,120.00. (Doc. #18, *PageID* #1344). Counsel may not recover attorney fees under both the EAJA and 42 U.S.C. § 406(b) for the same work. Therefore, Plaintiff's counsel must return to Plaintiff the previously awarded EAJA fees in the amount of \$9,120.00. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002).

IT IS THEREFORE ORDERED THAT:

1. The Motion for Allowance of Attorney Fees (Doc. #18) filed by Plaintiff's attorney is GRANTED;
2. The Commissioner shall pay Plaintiff's attorney fees pursuant to 42 U.S.C. § 406(b)(1) in the amount of \$19,899.38;
3. Plaintiff's counsel shall refund to Plaintiff the amount of attorney fees, if any, he has actually received under the Equal Access to Justice Act; and
4. The case remains terminated on the docket of this Court.

IT IS SO ORDERED.

April 14, 2023

s/Peter B. Silvain, Jr.

Peter B. Silvain, Jr.

United States Magistrate Judge